

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

PARKERSBURG

DALE E. BRUM,

Petitioner,

v.

Case No. 6:07-cv-00405

THE COUNTY OF WOOD, WEST VIRGINIA,  
THE STATE OF WEST VIRGINIA,  
THE CIRCUIT COURT OF WOOD COUNTY,  
WEST VIRGINIA, and  
VIRGINIA CONLEY, Wood County Prosecutor,  
in her official capacity,

Respondents.

**PROPOSED FINDINGS AND RECOMMENDATION**

This action was filed by Dale E. Brum, who is proceeding pro se, on June 27, 2007, as an attempted removal of a criminal prosecution against him in Wood County, West Virginia. This case is assigned to the Hon. Joseph R. Goodwin, Chief Judge, and referred to the undersigned for submission of proposed findings and recommendation. Pending before the court is Petitioner's Notice of Respondents' Default and Motion and Demand for Default Judgment (docket # 7).

**PROCEDURAL HISTORY**

On May 12, 2006, Petitioner was indicted by a grand jury sitting in Wood County, West Virginia, on three counts of threatening a public official, in violation of W. Va. Code § 61-5-27(c). State v. Brum, No. 06-F-80. It appears that Petitioner was

represented by attorney William Merriman, but Petitioner also filed documents himself. On June 27, 2007, Petitioner filed the Notice of Petition and Verified Petition for Warrant of Removal (# 1 in this case) in both the Circuit Court of Wood County and this court. The criminal case continued notwithstanding Petitioner's attempt to remove it. On September 17, 2007, the Wood County Prosecuting Attorney requested that Case No. 06-F-80 be dismissed, advising that Petitioner had been re-indicted by the Wood County grand jury, in Case No. 07-F-141.

The indictment in State v. Brum, No. 07-F-141, was filed September 12, 2007. It was dismissed on November 27, 2007, at the request of the Wood County Prosecuting Attorney, Petitioner having been re-indicated by a special grand jury.

On November 13, 2007, the special grand jury indicted Petitioner on two counts of retaliation against a public official and one count of retaliation against a person participating in an official proceeding. State v. Brum, No 07-F-189. The case went to trial before a jury on June 16 through 18, 2008, resulting in a verdict of "not guilty" on all counts.

**PENDING MOTION REGARDING DEFAULT**

According to a certificate of service, when Petitioner filed the instant Notice of Petition and Verified Petition for Warrant of Removal, he served Virginia Conley, Attorney General Darrell V. McGraw, Jr., and William O. Merriman, Esq. by mail, and personally

served the Hon. J.D. Beane, Circuit Judge of Wood County. Those who were "served," never filed any document in this case. On September 11, 2007, Petitioner filed documents entitled "Notice of Respondents' Default and Motion and Demand for Default Judgment," (# 7), and "Verification of Non-incompetence of all Parties in Default," (# 8), which he served in the same manner as the Notice of Petition. On September 17, 2007, as noted above, the criminal case which Petitioner was attempting to remove, was dismissed.

Based on the foregoing facts, the undersigned proposes that the presiding District Judge **FIND** that the underlying criminal case which Petitioner attempted to remove was dismissed and that this case is moot. It is respectfully **RECOMMENDED** that the Motion for Default Judgment be denied and that this case be dismissed with prejudice.

The parties are notified that this "Proposed Findings and Recommendation" is hereby **FILED**, and a copy will be submitted to the Honorable Joseph R. Goodwin, Chief United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(e) and 72(b), Federal Rules of Civil Procedure, the parties shall have ten days (filing of objections) and three days (mailing) from the date of filing this "Proposed Findings and Recommendation" within which to file with the Clerk of this Court, specific written objections, identifying the portions of the "Proposed Findings and Recommendation" to which

objection is made, and the basis of such objection. Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be provided to opposing parties, Chief Judge Goodwin and this Magistrate Judge.

The Clerk is directed to file this "Proposed Findings and Recommendation" and to mail a copy of the same to Plaintiff.

July 14, 2008  
Date

Mary E. Stanley  
Mary E. Stanley  
United States Magistrate Judge